IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4950 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL MANUBHAI BECHARBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR JV JAPEE for Petitioners

Mr K G Sheth, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/11/2000

C A V JUDGEMENT

This application has been filed by the applicants

above named under Section 482 of the Criminal Procedure Code, 1973 (for short 'the Code') for quashing criminal case no.227/98 arising out of criminal enquiry case no.1/98 pending before the learned Judicial Magistrate First Class, Deodar, for offences punishable under sections 406, 420 read with section 114 of Indian Penal Code. The aforesaid complaint was filed by the second opponent before the aforesaid court against the petitioners above named for the aforesaid offences. The facts of the case alleged in the said complaint may be briefly stated as follows:

2. That the first applicant is a dealer dealing in Narmada brand cotton seeds agency at Himatnagar. That the second and third applicants are the owners of Narmada Seeds Agency at Himatnagar. It is alleged in the complaint that these three applicants have been dealing in the business of sowing cotton seeds in different parts of the State. The complaint further reveals that on 19.5.1996, the three applicants approached the second opponent at his residence in presence of certain witnesses. That they told the second opponent that the second opponent should sow the said cotton seeds being Narmada-9 brand cotton seeds in his field. It is further alleged in the complaint that they had also told the second respondent that the present applicants will purchase all the cotton seeds from the second opponent at the rate of Rs.200/- per kg. That accordingly the second opponent trusted the said words of the applicant and had sown the said cotton seeds in his land admeasuring 10 acres. That similarly, other farmers in the said village had also sown the said cotton seed in their fields. The original complainant has further alleged in the complaint that there was production of 1200 kg. of cotton seed and similarly Patel Umedbhai Revabhai had also an output of 500 kg. cotton seed. Anadabhai Devsibhai also had an output of 300 kg. of the said cotton seed. It is further alleged that on 31.12.1996, the three applicants had again approached the second opponent at his residence and had purchased the said cotton seeds from him. That they had also told him that the seeds would be required to undergo tests and thereafter they would pay Rs.2,40,000/- to the second opponent within two months. That on the aforesaid words of the applicants, the second opponent parted with the said cotton seeds and the applicants had taken away the said seeds with them. In short, it is an admitted position that the applicants had paid an amount of Rs.1,80,000/- on 30.6.1997 and they had agreed to pay the remaining amount of Rs.60,000/by or before 30.8.1997. That despite several reminders, the applicants did not pay the amount of Rs.60,000/- to the

second opponent. That thereafter, the applicants had told the second respondent that the business was being run in loss and, therefore, it was not possible for them to pay the said amount and therefore, the second opponent should act as per his wishes. The second opponent has, therefore, said that the applicants had given the aforesaid assurance and, therefore, the second opponent has parted with the aforesaid cotton seeds and thereafter, the applicants have not paid the amount of Rs.60,000/- and thus they have committed criminal misappropriation, cheating and criminal breach of trust and thus the aforesaid complaint was filed.

3. On institution of the aforesaid complaint, learned Judicial Magistrate First Class had referred the matter to the police station for enquiry under section 202 of the Code. After receipt of the report, learned JMFC registered the complaint and issued process for offences under section 406, 420 read with section 114 of the IPC against the present applicants. Feeling aggrieved by the said order of the learned Magistrate the applicants have preferred this application before this court. It has been mainly contended here that the learned Magistrate had not applied his mind on the facts and circumstances of the case and therefore, the complaint is required to be quashed. It is further contended that there is civil dispute between the parties and, therefore, there is no ingredients of criminal offences being committed by the applicants and hence the complaint is required to be quashed. It is further contended that there is an agreement between the parties to pay the amount to the second opponent. That as per the details shown in the agreement, the second opponent has paid up the full amount as per the contract and there is no due and the complaint is required to be quashed.

4. Rule was issued. Appearance has been made on behalf of the second opponent as well as for the State. I have heard the learned Advocates for the parties and have perused the papers. Mr J V Japee, learned Advocate for the applicant had argued at length that there is agreement between the parties and the price of the cotton seeds purchased by the applicant was required to be paid by the applicant to the second opponent in accordance with the terms and conditions of the said contract. It is also his case that the said amount has been paid in full according to the said contract and, therefore, there is no amount due to the second opponent by the present applicants. For the said purpose, he has referred the agreement which is placed at page 16. This is a matter of defence of the present applicants. It is to be seen

that it is not clear as to whether this agreement has actually been produced by the applicants before the Police Investigating Agency. Even if it is not done, it is open to the applicants to produce the said agreement before the trial court and prove the same. Since this has not been done, it is a disputed question of fact so far as this court is concerned and, therefore, it is not open for this court to enter into such disputed question of fact in this quashing matter.

5. With respect to non-application of mind. It is to be seen that the matter has not directly been registered as complaint by the learned Magistrate. The complaint was filed on 1.1.1998 and on receipt of the complaint, it was referred to the Police Station for enquiry under section 202 of the Code. Thereafter, the enquiry was gone into and a report was submitted to the learned Magistrate. Copy of the said report is not with us but the order of the learned Magistrate dated 15.6.1998 makes it clear that the said police report was considered by the learned Magistrate and the said report reveals prima facie case of offence against the applicants. Therefore, the complaint was ordered to be registered and process was ordered to be issued against the applicants. In that view of the matter, learned Magistrate did not directly issue the process on the presentment of the complaint, he waited till receipt from the police report and after receipt of the said report, he has applied his mind and found that the offences were prima facie made would and, therefore, the complaint was registered and process was issued. In the facts and circumstances of the case, it cannot be said that this is a case of non-application of mind. Had the police report disclosed no offence, then the learned Magistrate may not have registered the complaint. Moreover, it was open to the present applicants to produce certified copy of the said police report before this court in support of the present petition. The said report has not been brought on record. It therefore, cannot be said that no offence was made out even according to the report of the police.

6. It is further contended that there is civil dispute between the parties. This is after all a transaction which can be said to be commercial transaction. In commercial transaction, there may be civil dispute coupled with criminal offence. Therefore, simply because there is civil dispute, it cannot be said that since there is a civil dispute, there is no criminal offence committed by the applicants.

7. Again, it has been argued that whatever was due to the second opponent has been paid to him and nothing

is due to the second opponent by the applicant. This will again be a dispute to be settled between the parties by appreciating evidence on record. Evidence includes oral as well as documentary evidence. Appreciation of evidence can be undertaken only when it is produced on record. This is not the stage at which this court can enter into. It is more so when the documents produced on record are required to be produced in original and proved before the court concerned. This is not the place where evidence can be produced and appreciated. Documents on record of this court at page 5 onwards are still to be proved and till they are proved, they cannot be read as they stand.

8. It is further contended that name of the present second opponent is shown only as C/o and, therefore, the second opponent is not the principal person with whom the agreement has been entered into. After all this is a matter related to cognizable offence and any person even not connected with the subject matter of the dispute can also move the court or police machinery and the court or police can properly deal with the said subject. Therefore, simply because the name of the second opponent does not appear as principal person having agreement with the applicants, it cannot be said no offence is made out.

9. In view of the aforesaid, I am of the view that when the matter was referred to the police station and police investigating officer has, prima facie, found that offence has been made out and when positive report was submitted to the learned Magistrate and when the learned Magistrate directed to issue process after considering the police report, it cannot be said that no offence is made out. In the facts and circumstances of the case, in my opinion, there is no merit in the present application and therefore, it deserves to be dismissed. It may be noted here that the learned APP appearing for the State supported the case of the second opponent and stated that the police report positively supports the second opponent and, therefore, the complaint cannot be quashed. It is also argued by the learned APP that the documents which are placed along with the present application may be produced and proved before the court concerned and on production and proof thereafter, the learned Magistrate will be in a position to deal with the said documents and appreciate the same in light of oral and other documentary evidence which may be produced before the court. It is, therefore, his contention that the complaint cannot be lightly quashed.

10. In view of the aforesaid, I am of the view that

there is no merit in the present application and it deserves to be dismissed. At the same time, it would be open to the applicants to produce necessary documentary and oral evidence before the trial court. It would be seen that the offences alleged against the present applicants involve warrants triable case. Therefore, the learned Magistrate will be required to go for evidence at the first instance and then to decide whether there is sufficient evidence to frame the charge. At that stage also, the applicants can certainly plead that there is no evidence or other material to frame the charge. Then the learned Magistrate will be in a position to appreciate the said position according to law and in accordance with evidence on record.

6. In the result, this application is dismissed.
Rule is discharged.

13.11.2000 [D P Buch, J.]
msp